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March 30, 2010

Via E-Filing, Fax Transmission and Regular Mail

Hon. Garrett E. Brown, Jr., Chief Judge
United States District Court
Clarkson S. Fisher Federal Building & U.S. Courthouse
Room 4050
402 East State Street
Trenton, NJ 08609

RE: *Boswell v. City of New Brunswick, et al.*
Civil Action No. 3:08-cv-05098 GEB-JJH

Dear Judge Brown:

Regarding the above-captioned matter, please be advised that we have received and reviewed the reply Letter Brief authored by Susan K. O'Connor, Esq. and submitted in response to our opposition to a motion for summary judgment filed on behalf of the defendants City of New Brunswick, New Brunswick Police Department and New Brunswick Police Officer James Feaster (the "New Brunswick defendants"). We note several factual inaccuracies which directly contradict the sworn testimony in the record and which we believe are misleading. We were instructed by Your Honor's office to submit the within rebuttal letter in this regard.

We would like to call to Your Honor's attention certain statements made by Ms. O'Connor on pages 8 and 9 of her Letter Brief. Specifically, Ms. O'Connor states that "[p]laintiff conveniently ignores the fact that Mr. Boswell could have exited the park similar to the manner he entered the park, by means of: (1) New Street; (2) a covered walkway; (3) by crossing Route 18 .... at the intersection of Commercial Avenue where a crosswalk and traffic signal existed; or (4) by swimming the river.....Clearly, it was Mr. Boswell's choice as to how to exit Boyd Park. Similarly, it was Mr. Boswell's choice to use Rte. 18 and not use New Street or the covered footbridge which allows pedestrians to

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safely cross Rte. 18." See O'Connor Ltr. Br. at pp. 8-9. These statements are both speculative and misleading.

Initially, the record is devoid of any reference to Mr. Boswell's entering Boyd Park, which indicates that no one knows how he did so or how long he had been there. Another possibility for his entering the park is that he could have been dropped off by a friend driving by the park or in the park. However, this suggestion, like those presented in Ms. O'Connor's Letter Brief on this issue, is nothing more than pure speculation. Accordingly, we respectfully urge this Court not to consider Ms. O'Connor's speculative and unsubstantiated statements regarding how Mr. Boswell may have entered Boyd Park.

More importantly, Ms. O'Connor's suggestion that Mr. Boswell could have used a covered walkway, see id. at p.8, is inappropriate because there is no evidence that this walkway, which previously linked Memorial Homes to the opposite side of Route 18, was open or operational at the time of the incident. Indeed, the fact that the footbridge was not operational is confirmed by the sworn testimony of Officer Barber, at page 47, lines 18-24 (see attached Exhibit A), wherein he stated that, at the time of Mr. Boswell's accident, if people wanted to enjoy Boyd Park and they were trying to access the park on foot, they would have to cross Route 18. He specifically stated that there was no bridge. Ms. O'Connor has submitted no evidence whatsoever, such as verification from the Department of Transportation or a New Brunswick official to contradict Officer Barber's testimony. Therefore, we respectfully urge this Court not to consider Ms. O'Connor's speculative and unsubstantiated statements that a pedestrian footbridge provided additional means of egress from Boyd Park at the time of the incident.

Another misleading statement by Ms. O'Connor is her claim that Mr. Boswell may have exited Boyd Park out of "boredom" and that it was his "choice" as to how to exit Boyd Park in terms of walking toward Route 18 rather than New Street or the covered footbridge. See O'Connor Ltr. Br. at pp. 8-9. These statements directly contradict the sworn testimony of Officer Feaster, who on page 50, lines 4-7, page 58, lines 6-9, page 64, lines 6-8, page 65, lines 10-18, page 75, line 21-25, pages 76, line 1 to 77, line 1, and page 90, lines 11-23 (see attached Exhibit B), clearly states that he ordered Mr. Boswell out of the park and specifically directed him to do so by way of crossing Route 18 at Commercial Avenue. Officer Feaster's sworn testimony leaves no doubt as to why Mr. Boswell left the park and why he crossed Route 18 at Commercial Avenue. Therefore, we respectfully urge this Court not to consider Ms. O'Connor's misleading comments concerning how and why Mr. Boswell left Boyd Park.

Ms. O'Connor also claims that it was Mr. Boswell's "choice" to cross the six-lane highway at the intersection of Commercial Avenue and Route 18 without using the crosswalk and against the traffic light. See O'Connor Ltr. Br. at p. 8. Once again, these claims directly contradict Officer Barber's sworn testimony at page 41, lines 7-15 (see attached Exhibit A), in which he states that there was no crosswalk at the intersection of Route 18 and Commercial Avenue because if there had been one, he would have noted it in his investigatory police report. In addition, there is no testimony in the record which indicates whether or not Mr. Boswell started his trip across Route 18 on a green or red light. Therefore, we respectfully urge this Court not to consider Ms. O'Connor's speculative and misleading comments concerning how and why Mr. Boswell attempted to cross Route 18 at Commercial Avenue.

Finally, Ms. O'Connor attached as an exhibit to her Letter Brief two Google photographs dated 2002 of aerial views of what purports to be Route 18. See O'Connor Ltr. Br. at Ex. A. Ms. O'Connor fails to submit any Certification or Affidavit from anyone to indicate that these photographs represent the condition of the roadway and crossovers at the time of the accident. Therefore, we respectfully urge this Court not to consider these aerial photographs.

For all of the foregoing reasons, we respectfully urge this Court not to consider the foregoing speculative and misleading statements contained in Ms. O'Connor's Letter Brief submitted on behalf of the New Brunswick defendants in response to our opposition to their motion for summary judgment.

Respectfully submitted,

LORA B. GLICK
For the Firm

LBG/

cc: Susan K. O'Connor, Esq. (via e-file, fax transmission and regular mail)
Mario C. Colitti, Esq. (via e-file, fax transmission and regular mail)
Stephen R. Dumser, Esq. (via e-file, fax transmission and regular mail)
Steven Altman, Esq. (via e-file, fax transmission and regular mail)

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Case No. 08-5098(GEB)

MICHAEL BOSWELL,

Plaintiff,

v.

STEVE EOON, KIRSTEN BYRNES, CHRISTINA EICKMAN, PTL. JAMES FEISTER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK; and JOHN DOES (1 through 5),

Defendants.

DEPOSITION UPON ORAL EXAMINATION OF ANTHONY DOMINIC BARBER

T R A N S C R I P T of the deposition of ANTHONY DOMINIC BARBER, before BETH VITTOR, a Certified Court Reporter and Notary Public of the State of New Jersey, held at the offices of HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, 40 Paterson Street, New Brunswick, New Jersey, on Thursday, January 7, 2010, commencing at 10:10 a.m.

BETH VITTOR, CCR
Certified Court Reporter
39 Hawthorne Lane
East Windsor, New Jersey 08520
(609) 426-4704
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COPY

you say 44 feet and 3 inches, that's where it begins?
A I'm -- on this particular measurement I'm not exactly sure as to --
Q What you meant?
A No, no, I wasn't going to say that.
Q Sorry.
A Yes. Okay. I just had to review my diagram, it's been a long time.
Q I understand.
A Okay. Yes, from -- okay. From the -- where the median begins, where the grass median begins --
Q Referring to a page?
A Yes. On page 5 of the report on the diagram.
Q Okay.
A Okay? You will see right by -- you will see where on the line where it says "Commercial Avenue" to the right, if you move to the center, okay, and you'll see a little "A," just above the "A" you'll see the start of the medium.
Okay? The area from where the start of the medium begins up to "G" where those two little lines protrude, okay, that's the 44 feet, 3 inches; that is all grassy area there. The median -- the

guardrail doesn't begin until 44 feet, 3 inches from where the median, grass median first begins at the intersection, the southbound side of that intersection.
Q Okay. So does the -- does the guard begin at the line in front of the "G" on your diagram?
A Yes, sir, that's where it begins, approximately where it begins, yes.
Q And the grass median, does that begin at the "X" with the --
A Yes, sir.
Q -- with the letter "A"?
A Yes, sir.
Q Okay. So the distance from "A" to "G" or "A" to that line is --
A Well, you can't really -- yes, it's the line. Not so much the "A," that refers to something else. But the line that goes there, that half crescent line which is the start of that grassy median all the way up to the first line where just below the "G" is 44 feet, 3 inches, so that's what that means.
Q So is it from the "X" to the line that's 44 --

A Yes, yes, yes, you can use that, yes.
Q Just let me finish the question.
So from the "X" to the line it's 44 feet, 3 inches. Correct?
A Correct.
Q And that 44 feet, 3 inches is a grass median. Correct?
A Yes, correct.
Q Do you know how wide it is?
A The width, no, I don't know that.
Q Do you know how high it is?
A It's a mound, that's all I can tell you.
Q I mean, is it higher than a man or --
A Oh, no, no, no, no.
Q So is it -- is it the size of a curb?
A It would be a little higher than a curb approximately when it was there.
Q And when I say "curb," I mean the height of an average curb.
A It would be a little higher.
Q Okay. But you could -- any pedestrian could walk acrossed it?
A They could walk on it, yes.
Q They could stand on it?
A Yes, sir.

Q So if somebody got caught in the middle and the light changed, they could actually stand there?
A Right.
Q And you've seen that?
A Yes.
Q Now, one thing I notice that you don't have in your diagram is any crosswalk. Is there a crosswalk?
A If there was a crosswalk there at that time, it would have been noted in the diagram.
Q So it's your testimony that you did not report the existence of a crosswalk?
A I did not put a crosswalk in this diagram, no.
Q And if a pedestrian were coming from Boyd Park crossing Route 18 to go towards Commercial, they would have to cross how many lanes of travel?
A They'd have to cross three lanes going northbound and three lanes going southbound.
Q Okay. And any shoulders?
A Yes. And there's a shoulder there, also.
Q Both sides or just one side?
A I don't recall now; they've changed that

side that he crossed?
A Southbound side, yes.
Q All right. Is that because that's where he found his body -- or, I'm sorry, that's where you were told his body was, or that anybody actually saw him cross?
A Well, we have a witness that said they saw him cross, and there was physical evidence at those -- at that particular part of the scene.
Q Okay. So the witness you're talking about is Joy Simmons. Correct?
A Yes.
Q When you say she saw him cross, she saw him on the median. Correct?
A That's what she said to me, yes, I believe so.
Q There's no witness that says they saw him cross from the Boyd Park side. Correct?
A Not to my knowledge.
Q No. The only witnesses that we know about, all -- the first observation of him by Ms. Simmons shows him in the median and then stepping out into the southbound lane. Correct?
A Yes.
Q All right. Now, it's at that point that

you concluded from the witnesses' statements that he had a -- "he" meaning the pedestrian, was crossing against a red light. Correct?
A Yes.
Q But would it be fair to say that when he first started to cross the northbound lanes, do you know what color the light was for him?
A No.
Q Do you know how long it took him to cross the northbound lanes?
A No.
Q Do you know, did you get the timing sequence of these lights?
A No, I -- no.
Q So you don't know how long the light is red or green. Correct?
A No, sir.
Q And at that time people who were enjoying Boyd Park in order to get across Route 18 would have to cross at the intersection, is that correct, if they're on foot?
A Yes.
Q There was no bridge?
A No.
Q And the light that a pedestrian would

have to rely upon is the letter "B" that you wrote in the median?
A One of them, yes.
Q Okay. Well, there's only two lights. Correct?
A Well, there were two lights, yes.
Q By lights we mean traffic signals?
A Yes.
Q So if he's standing on the corner and looking at the median, would a pedestrian be able to see, because of the configuration of the lighting or the light, whether he had a red light or green light?
MS. CLEAVER: Objection to form.
A I can't -- I don't know, sir, I couldn't answer that one.
Q Well, let me rephrase the question.
Do you know if the traffic signal as you've drawn it in the diagram, page 3, shows the color of the light for the north and southbound traffic?
A I don't recall, I don't recall that -- whether it shows both sides or not.
Q Okay. Well, how would a person going north on Route 18 know to stop at that intersection? Wouldn't he have to be able to see -- isn't there a

light there that tells him to stop when it's red?
A Yes.
Q And same thing with the southbound traffic. Right?
A Yes.
Q And you concluded from the investigation that these people traveling south all had a green light. Correct?
A Yes.
Q Okay. But my question simply is, if a pedestrian were trying to cross the intersection and he looked at the light, would it tell him red or green in terms of crossing?
A If he looks at the light, yes.
Q Yeah, okay. There's no "walk/don't walk" sign. Right?
A No.
Q All right. And we don't know what color the light was for Mr. Boswell when he crossed the northbound lanes. Correct?
A That I don't know.
Q Now, you mentioned construction barrels.
A Yes, sir.
Q And I think you wrote in the number of them. Correct? That was your "J." I see four

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY (TRENTON)
CIVIL ACTION NO. 3:08-cv-05098-GEB-LHG

MICHAEL BOSWELL, an Incapacitated Person by his Guardian Ad Litem, ETHEL BOSWELL, and ETHEL BOSWELL, individually,

Plaintiffs,

-vs-

STEVE EOON, KIRSTEN BYRNES, CHRISTINA EICKMAN, PTL. JAMES FEISTER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK, and JOHN DOES (#1 thru #5),

Defendants.

ORAL DEPOSITION OF **James Feaster**

* * * * *

Wednesday, July 15, 2009

* * * * *

T R A N S C R I P T in the above matter taken by Elisabeth A. Landi, Certified Court Reporter and Notary Public of the State of New Jersey, at the offices of HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, ESQUIRES, 40 Paterson Street, New Brunswick, New Jersey, commencing at 10:20 a.m.

BETH VITTOR, C.C.R.
CERTIFIED COURT REPORTERS
39 Hawthorne Lane
East Windsor, New Jersey 08520
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FAX (609) 426-4703

A. **Yes.**
Q. Nothing else?
A. **No.**
Q. And then what did you observe next?
A. **Going towards the canal. I tell him he has to leave the park and I point in the direction of Commercial Avenue.**
Q. Which would be across Route 18?
A. **Well, which is -- has a traffic light there and -- yeah, crosses Route 18, but in that direction, right. And I thought -- go ahead. I'm sorry.**
Q. You thought what?
A. **I thought he was going to pick up something and that's why he was moving towards the canal, maybe some property of his or something like that.**
Q. Did you see any property?
A. **No, no.**
Q. All right. So what happened next?
A. **After I directed him to move out of the park he -- I heard him saying something, not sure exactly what he said, but he was saying things.**
Q. Let me just stop you. He had started to go towards the canal.

A. **Canal, right.**
Q. You directed him out of the park.
A. **Right.**
Q. And did he walk past you to get out of the park?
A. **No. He walked around the concession area or the, you know, the concrete platforms there.**
Q. So he -- he didn't cross your path again.
A. **No.**
Q. But you could observe him?
A. **From point to point, yes.**
Q. So did you observe him doing anything or --
A. **He was ripping up my ticket.**
Q. Ripping it up?
A. **Yes.**
Q. Could you see that?
A. **Yes.**
Q. Did you retrieve it?
A. **No.**
Q. And did he say something when he ripped it up?
A. **He was saying something, but I could not make out what he was saying.**
Q. When you say you couldn't make it out is

it because you couldn't hear it or because you couldn't understand him?
A. **Probably both.**
Q. All right. So what happened next?
A. **He walked towards Commercial Avenue. I went back to my patrol car. I sat there. I did my paperwork.**
Q. What paperwork?
A. **I issued him another summons.**
Q. For?
A. **Ticket.**
Q. Is that --
A. **For open container. That's P-2 exhibit.**
Q. Was there any particular reason why you didn't do that in his presence?
A. **I did that because he ripped up the original ticket.**
Q. Okay. But I mean you could have stopped him, correct?
A. **For what?**
Q. For --
MR. CORSON: Let him ask the questions. You answer the questions.
THE WITNESS: I'm sorry.
BY MR. GALEX:

Q. You could have stopped him to issue the summons.
A. **Yes.**
Q. But you chose not to.
A. **Correct.**
Q. And this summons that you wrote was open container and then you wrote alcohol and then you wrote beer.
Do you know why you wrote both the word alcohol and beer?
A. **Having an open container of alcohol in the City of New Brunswick in the park or even on the streets is a violation of the ordinances of the City of New Brunswick, and so I issued him the picket.**
Q. Now, did you issue this ticket before the accident took place?
A. **Yes.**
Q. Were you aware of the accident?
MR. CORSON: I'll object to form.
BY MR. GALEX:
Q. At some point in time the accident happened.
A. **Correct.**
Q. Were you aware of it?
A. **That I issued --**

you directed him out of the park?
You said that he was walking towards the canal. You stopped him. I assume with your hand or verbally?
A. **Verbally.**
Q. And told him to -- do you remember your exact words?
A. **You have to leave the park. And I motioned toward Commercial Avenue.**
Q. All right. Did you know that he was homeless at the time?
A. **No, sir.**
Q. Have you seen the subsequent reports written by other police officers in this case?
A. **I've seen the report written by Officer -- let me think. Barber. Barber. Anthony Barber. When -- I saw his report, yes.**
Q. And he listed his address as homeless; is that correct?
A. **On the report, yes.**
Q. Can you take a look at that?
A. **Yes, sir.**
Q. In Barber's report on page 17 -- strike that.
Did Barber interview you?

A. **Yes.**
Q. Is it that night or later?
A. **That night.**
Q. Did he ask you what information you had about this event?
A. **I offered information about it.**
Q. Now, I'm going to read to you what Barber wrote.
A. **Okay.**
Q. And I'm going to ask you if that's what you told him.
A. **Okay.**
Q. He says, P1, which I assume is pedestrian, was lying on a bench in Boyd Park located near State Highway Route 18, New Brunswick, New Jersey, at approximately 1:45 a.m.
Is that what you told him?
A. **I don't recall about the time, but I told him, yes.**
Q. Then it says, Police Officer Feaster entered Boyd Park and observed P1.
Is that what you told him?
A. **Not in those words.**
Q. Tell me what words you remember telling him.

A. **I remember telling him that I knew the name of the person that was struck and was under a vehicle. I recall telling him that I had an encounter with him and had issued tickets to him in Boyd Park. I told him that I found him underneath the car after they sent me to the incident.**
Q. Say that again?
A. **He was found underneath the car when they sent me to the accident. I told him that I had -- he had a bottle of alcohol in the park. I told him I issued him two summonses. I think that's what I told him.**
Q. Did you ever ask Mr. Boswell where he lived?
A. **No.**
Q. Did you ask him if he had a phone number?
A. **No, sir.**
Q. Did you ask him if he had relatives?
A. **No, sir.**
Q. Did you know that he had recently been incarcerated?
A. **No, sir.**
Q. When you called in to find out about outstanding warrants, you did not receive any information about prior incarcerations?

A. **No, sir.**
Q. That's not something that you would normally receive?
A. **No.**
Q. They just tell you if there's a warrant or not a warrant.
A. **That's correct.**
Q. Going on with what the other officer wrote, he says, as Feaster approached P1, he sat up and looked at Feaster. Feaster observed a half-filled open quart bottle of beer under P1's bench.
Do you recall if that's what you told him?
A. **Could you read that to me again?**
Q. Sure.
A. **Thank you.**
Q. As Feaster approached P1, he sat up and looked at Feaster. Feaster observed a half-filled open quart bottle of beer under P1's bench.
A. **That's not how I would tell him that incident. You have to realize that he's taking a lot of statements and he's trying to incorporate this into a report.**
Q. Is this at the scene?

A. **I told him about my encounter with Mr. Boswell prior to the accident.**
Q. Right. But did you tell him at the scene of the accident?
A. **Yes.**
Q. When I say him I mean Officer --
A. **Barber.**
Q. -- Barber. Does Barber still work for the police department?
A. **No. He's retired, sir.**
Q. Do you know where he lives?
A. **I'm not sure where he lives.**
Q. Do you have to live in New Brunswick to be a police officer?
A. **To join the department you do.**
Q. But you don't know if he lives in New Brunswick?
A. **I'm not sure. I know at one time he lived in New Brunswick. I don't know now.**
Q. Do you know where he lived?
A. **Where he lived?**
Q. Yeah.
A. **One time -- I'm trying to think. At one time -- well, it's now called Raritan Crossing. He lived out there.**

Q. When's the last time you saw him?
A. **Couple months ago.**
Q. Is that at the police station?
A. **I believe so.**
Q. Did you ask him what he's doing?
A. **I didn't have conversation with him at that time.**
Q. His report goes on to say that Feaster asked P1 for I.D. and did a warrants check.
Do you remember telling him that?
A. **Yes.**
Q. It came back negative.
Do you remember telling him that?
A. **Yes.**
Q. Feaster then advised P1 he could not stay in the park after dark and issued city ordinance SC 050225 for drinking in park after dark.
Do you remember telling him that?
A. **I remember telling him that I issued two city summonses and one was for being in the park after-hours and having an open container.**
Q. He then says P1 began to leave, walking towards the canal. P1 threw the summons away. Feaster observed -- observing this, walked up to P1 and P1 began to curse.

Do you remember that?
A. **That, I do not recall ever saying to him then. In fact, I didn't, because that wasn't what transpired.**
Q. So you don't know where he got that from?
A. **I don't. I know what I told him, which was that I told Mr. Boswell he had to leave the park and I directed him with my arm.**
Q. But Boswell never cursed at you?
A. **I told Officer Barber that he was saying something to me, but I couldn't make out what he was saying.**
Q. But my question is, do you recall if Boswell ever cursed at you?
A. **I could not make that out.**
Q. It says, and I am just reading it, and then it says at -- oh, cursed at Feaster. Then it says P1 was then issued another city ordinance, SC 050226, for drinking in public. In public. Period.
Did you issue that ticket to him, meaning Boswell, because of something Boswell did?
A. **He was issued that summons because of the open container of alcohol in the park.**
Q. Were you under the impression that he had been drinking in the park?

MR. CORSON: Object to form.
You can answer.
THE WITNESS: I believe that he had an open container and he might have -- he would have consumed that.
BY MR. GALEX:
Q. Now, is there an ordinance that forbids drinking in the park or just have an open container?
A. **Open container.**
Q. It then says Feaster then advised P1 to leave the park.
So, is that what you told Officer Barber, that after he walked towards the canal, discarded the ticket and you started to write up the ticket you told him to leave the park?
A. **I told Officer Barber that he started to walk towards the canal and I directed him to the other side, which is Commercial Avenue.**
Q. Right. You said that P -- or he said that P1 is familiar with the area.
Do you know where he got that information from?
A. **No, sir.**
Q. Is that something you told Barber?
A. **I don't recall saying that to Barber.**

Q. If he -- if you knew that he was homeless, would your actions have been any different that evening?
MR. CORSON: I'll object to form.
You can answer.
THE WITNESS: Could you answer that question -- ask that question again? I'm sorry.
MR. GALEX: Yeah.
BY MR. GALEX:
Q. You direct him out of the park.
A. Right.
Q. If you knew that he was homeless, would you have directed him out of the park?
A. It's not a yes or no answer. Okay? There are -- there is a shelter in the City of New Brunswick that does take in people. And if that was the case, if he had told me he was homeless, I could have taken him to the homeless shelter.
Q. Is that discretionary?
A. It's common sense.
Q. Let me just rephrase my question.
Are you trained to take a homeless person to a shelter when you find him sitting in a park at 1:30 in the morning? Is that part of your instructional training?

A. Yes. It has been part of my training from my -- my training officers to other officers that I've worked with and I consider that part of my training.
Q. And was there a shelter available?
A. There is a shelter in New Brunswick.
Q. Where is that?
A. That's on -- not far from the park, in fact. It's up on -- off of Commercial Avenue and Nielson. I forget the -- I think it's called the Osmond Shelter.
Q. Now, tell me what you remember in terms of the accident.
Did you see it take place?
A. No, sir.
Q. Did you see Mr. Boswell enter Route 18?
A. No, sir.
Q. When did you last see him before the accident happened?
A. I saw him walking out of the park.
Q. When you say out of, you mean towards Commercial Avenue?
A. That is correct.
Q. And there's a light at that intersection?
A. Yes, sir.

Q. What were the lighting conditions in that intersection?
A. There's streetlights and there is a traffic light and there's crosswalks, painted.
Q. A center divider?
A. Yes, sir.
Q. And so would you say the area is fairly well lit at the time that you issued the summons?
A. Yes.
Q. And would it be fair to say that you knew when you directed him out of the park that he would have to cross Route 18 to get to wherever he was going?
MR. CORSON: Object to form.
You can answer.
THE WITNESS: Could you ask that question again, sir?
MR. GALEX: Sure.
BY MR. GALEX:
Q. Since you direct him out of the park, in order to get out of the park would he have to cross Route 18?
A. Yes.
Q. And you anticipated that he would follow your instruction, correct?

A. Yes.
Q. Now, you didn't see him crossing Route 18.
A. No, sir.
Q. You didn't see the accident happen.
A. No, sir.
Q. How did you know that it took place?
A. I was sitting in my patrol car and the dispatcher came over and told me that there's an accident on Route 18 and Commercial Avenue.
Q. So what did you do?
A. So I went over to there.
Q. You walked?
A. No, drove in the patrol car. I'm sorry.
Q. And you're the first officer at the scene?
A. Yes, sir.
Q. And what did you see?
A. I saw two vehicles that were in the intersection. People were outside the cars. They were in an excited state. Person told me that a person was under the car. I says let me -- show me. They took me. I looked under the I -- under the vehicle and I saw a person that was dressed the same as Mr. Boswell.

MR. CORSON: I just have a few questions.
(EXAMINATION OF MR. FEASTER BY MR. CORSON:)
Q. You testified during the course of your dep that Mr. Boswell had spoken to you at least on one occasion and then said something out of your hearing on another occasion; is that correct?
A. That is correct.
Q. Was there anything about his speech that indicated to you that he was intoxicated?
A. No.
Q. When you directed him from Boyd Park did you direct him toward the Commercial Avenue intersection or did you direct him to leave the park?
A. I directed him in the direction of Commercial Avenue.
Q. Did you tell him to go to the intersection of Commercial Avenue?
A. No, sir.
Q. What did you tell him?
A. I directed him. I said you have to leave the park and I, with an arm movement, showed him where to go in direction.
Q. Based on your training, did you make sufficient observations of Mr. Boswell on that

evening to make a determination as to whether or not he was intoxicated?
A. Yes.
Q. Based on your training, do you believe he was intoxicated that evening?
A. No.
Q. Do you believe he was a danger to himself that evening?
A. No.
Q. Did you believe it was necessary for you to contact an ambulance that evening?
A. No.
Q. At any time did Mr. Boswell identify to you that the bottle of beer in the location belonged to him?
A. No.
Q. Did you observe him drinking from the bottle at any time?
A. No, sir.
Q. Did you observe him drinking at all that evening?
A. No, sir.
MR. CORSON: I have nothing else.
(EXAMINATION OF MR. FEASTER BY MR. GALEX:)
Q. You believed it was his bottle, correct?

A. Pardon me?
Q. You believed it was his bottle, correct?
A. Yes.
Q. That's why you wrote the summons.
A. Yes.
MR. GALEX: That's all I have. Thank you.
(Witness excused.)
(Testimony concluded at 12:20 p.m.)

Certificate

I, Elisabeth A. Landi, a Notary Public and Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination,

James Feaster

was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

Elisabeth Landi

Elisabeth A. Landi, C.C.R., R.P.R.
Notary Public, State of New Jersey
My Commission Expires May 15, 2013
Certificate No. XI01590
Date: July 22, 2009